

COMMANDITER FELLOWSHIP IN COMMERCIAL LAW

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Abstract : *Economic activity in the country of Indonesia experienced very rapid development. This can cause the emergence of a problem that exists in the community. Vice versa, a legal entity in carrying out its business activities also requires money. One of the business entities is Commander Association. A Commander Association is a form of business that is not a legal entity. A Commander Association in carrying out its business activities gets capital through loans from banking institutions and from non-banking institutions with a certain guarantee. This journal is written using a normative juridical method because this journal uses secondary data that is used as a tool to collect data. Therefore, the journal that is written will explain about a Commissioner Alliance in commercial law. The main problem in this journal is more focused on explaining the meaning of business entity, forms of business entity, understanding of Communist Alliance, process of establishing Communist Fellowship, responsibility of allied parties of Commander Association, forms of Commander Association, legal status of Commissioner Alliance, and dissolution process of Commissioner Alliance. This is because there is no legal rule that specifically regulates a form of business entity in the form of the Commander Association.*

Keywords: Communal Commander, Responsibility, and Active Ally (Complementary Ally) and Passive Ally (Allied Commander)

Abstrak: Kegiatan ekonomi di negara Indonesia mengalami perkembangan yang sangat pesat. Hal tersebut dapat menyebabkan munculnya suatu masalah yang ada di masyarakat. Begitu pula sebaliknya, badan hukum dalam menjalankan kegiatan usahanya juga membutuhkan uang. Salah satu badan usaha tersebut adalah Asosiasi Komandan. Asosiasi Komandan adalah suatu bentuk bisnis yang bukan badan hukum. Perkumpulan Komandan dalam menjalankan kegiatan usahanya mendapat permodalan melalui pinjaman dari lembaga perbankan dan dari lembaga non perbankan dengan jaminan tertentu. Jurnal ini ditulis dengan menggunakan metode yuridis normatif karena jurnal ini menggunakan data sekunder yang digunakan sebagai alat untuk mengumpulkan data. Oleh karena itu, jurnal yang ditulis akan menjelaskan tentang Aliansi Komisioner di bidang hukum niaga. Masalah pokok dalam jurnal ini lebih difokuskan pada penjelasan pengertian badan usaha, bentuk badan usaha, pengertian Aliansi, proses pembentukan Persekutuan, tanggungjawab pihak-pihak sekutu Asosiasi Komandan, bentuk-bentuk Asosiasi Komandan, status hukum Komisaris. Aliansi, dan proses pembubaran Aliansi Komisaris. Pasalnya, belum ada aturan hukum yang secara khusus mengatur tentang bentuk badan usaha berupa Perkumpulan Panglima.

Kata Kunci: Komandan Komunal, Tanggung Jawab, dan Sekutu Aktif (Sekutu Pelengkap) dan SekutuPasif (Komandan Sekutu).

I. INTRODUCTION

The trade and economic activities in Indonesia have experienced very rapid development. This can cause the emergence of a problem that exists in the community. Everyone in fulfilling their daily needs always needs money. Vice versa, a legal entity in carrying out its business activities also requires money.¹ In Indonesia, there are many different types of business entities. Various forms of business entities are inherited from the Dutch state during the colonial period. However, various types of business entities have been changed to Indonesian names. An example is a *Maatschap* which is converted into a Civil Society, a Firm which is converted into a Firm Fellowship, a *Commanditaire Vennootschap* (CV) which is converted into a Communist Alliance, and a *Naamloze Vennootschap* (NV) which is converted into a Limited Liability Company.²

Lots of local entrepreneurs are part of creating a business competition. A business competition carried out by these entrepreneurs aims to get the maximum profit. The maximum profit is also a factor of entrepreneurs to conduct a business activity by establishing a business entity, a business activity carried out by entrepreneurs is referred to as a company. Entrepreneurs also have an option to establish a legal entity or establish a non - legal business entity. A legal business entity, for example, is a Limited Liability Company, a State-Owned Enterprise, and a *Persero*. Whereas a business entity that is non-legal, for example, is an individual company or a trade business, a civil company, a company firm, and a communal partnershi. The legal business entity has the same characteristics in terms of accountability.³

The word fellowship comes from the word *maatschap* or *vennootschap* from Dutch which means an agreement carried out by two or more people by working together to seek the greatest benefit by entering something in shared wealth.⁴ In carrying out a business activity in a partnership company, it is almost the same as running business activity in an individual company. It is based on the factor of entry into the wealth of personal property used to carry out a business

activity. Therefore, in terms of the liability in a relationship with a third party, it must involve the personal assets of the fellowship owners and the owners of the individual companies.

Among individual companies or trade business, civil companies (*Maatschap*), Firm Fellowships, and the Communal Alliance have similarities in terms of characteristics, namely the existence of unlimited liability for a relationship with the third party. Therefore, a business entity that is non-legal in its development has a higher risk in terms of a relationship of accountability with a third party.⁵

In a Commander Association there are two parties that carry out a business activity. These two parties, namely the active allies (complementary allies) and also passive allies (commandant allies). The active allies (complementary allies) and also the passive allies (the allied command parties) are regulated in Article 19 of the Commercial Law which explains that: "The company is in terms of releasing money which subsequently called the Commander Company, established by one person or several people who work together in full responsibility on the one party, and one person or several other people who are in charge of releasing money to other parties."⁶

Based on Article 19 to Article 21 of the Code of Commerce Law, it is explained that a Communal Alliance is a special form of Firm Alliance. The specificity that exists in a Commander Association when compared to a Firm Fellowship is the existence of allied command parties (passive allies). If a Firm Fellowship only has allies of firmament allies (active allied parties), then a Communal Alliance also has complementary allies (active allied parties) and allied command parties (passive allied parties).⁷

Article 19 The Law on Commercial Law turned out to receive special attention from the legal experts because of the term *geldschieters* to the term *commanditaire* which describes a definition of command, namely people parties or parties in charge of lending money.⁸ Although the notion of command in the Communist Guild is actually not the people or parties in charge to collect the money that has been lent to the people or other parties. Commander is a

participant or participant who is in a Commander Association that has the rights and obligations to obtain profits as much as possible from the distribution of the remainder of the assets in a Commander Alliance that has been liquidated.

A commandant or a passive ally also has the duty to bear a risk that occurs when a Commander Association experiences bankruptcy or loss in the amount in accordance with the income of the amount of capital at the beginning of the Commander Association was established. In addition, a commander or passive ally is not permitted to take the capital that has been given to a Commander Association, especially if the business activities in the Communist Association are still ongoing or still ongoing. Legal experts also explained that the use of the term *geldschieters* was used to describe a commandant or a passive ally in the Commercial Law which was the biggest mistake.⁹ The use of the term *geldschieters* for a commandant or a passive ally turns out to cause a misunderstanding that is quite important. This is because the use of both terms can cause a different legal effect.

A Commander Association is a form of business entity that is of the simplest nature and aims to obtain the greatest possible profit. So that to establish a new Commander Association there is no need for an authentic deed or a form of ratification from an authorized institution or party.¹⁰ So, to establish a new Commissioner Association only required a deed made by the parties who will establish a Commander Association and accompanied by the signatures of the parties concerned. If a deed that has been made already exists, then a Commander Association can stand up and be carried out by the parties concerned.

The existence of a risk that can endanger the personal assets owned by the complementary allies (the active allied parties) concerned is due to the establishment and also running a business activity that is in a Commander Association does not require a deed authentic or a form of authorization from an authorized institution or party. This cause a Commander Association does not have a permanent legal force. Although in the Code of Commerce Law it is indeed stipulated that to establish a Communal Alliance does not require the existence of an authentic deed or a form of authorization from an authorized

institution or party. So that all the roles and tasks that are owned by a Communist Fellowship are also all the roles and tasks that are owned by complementary allies (active allies), not all roles and tasks possessed by the allied commanders (passive allies). Therefore, this can make the allied parties (passive allied parties) and complementary allies (active allies) to improve their status to become a business entity that has a permanent legal force.

Based on the background described above, the formulation of the problem in this journal is about a Communist Alliance in the viewpoint of commercial law and regarding the responsibilities of complementary allies (active allied parties) and allied political parties (the passive allies) to various problems that occur within a Commander Alliance.

II. WRITING METHODS

Legal writing is scientific writing in the field of law based on certain methods, thoughts, and systematics with the aim of learning something about certain legal events by analyzing these legal events.¹¹ Based on its form, there are two methods of legal research, namely empirical legal research and library research.

While based on the scope of the discussion, this journal writing can be categorized into normative juridical literature writing. This normative juridical journal writing is also written with qualitative methods and analytical methods. The normative juridical method is a method of writing carried out by analyzing secondary data or library material that is still legal. While qualitative methods and methods of analysis are a method of writing carried out by analyzing statistical processes, both in the form of stories, descriptions, written documents, unwritten documents, and narratives.

Data used in writing this journal is secondary data, namely data obtained from methods that are literature and primary data, namely obtained data from the interview method. The tools used to collect the data used in writing this journal are a document study. Legal materials used in writing this journal are as follows:

1. Primary legal materials are legal materials that are used as the main source in writing this journal and have a very strong legal force on life in society. The primary legal materials used in writing this journal are the Civil Law, the Commercial Law, and other laws and regulations that are also related to the writing of this journal.
2. Secondary legal materials are legal materials that explain a matter concerning primary legal material. In writing this journal, the secondary material used includes books that discuss a Communist Fellowship in commercial law from various research reports, various collections of these, various collections of these, and various writings from prominent legal experts.
3. Tertiary legal materials are legal materials that can provide an explanation and also a guide to primary legal material and secondary legal material that has been used as a material in writing this journal. The legal materials used in writing this journal include the encyclopedia and dictionary.

III. DISCUSSION RESULT

A. Definition of A Business Entity

Based on the Law which regulates the Obligatory Registration of Companies, a company is a form of business that conducts business activities that are continuous and of a permanent nature, work, domicile and established in an area in the country of Indonesia with the aim of obtaining results or the maximum profit. Whereas for a business entity is a business entity or a business institution that is the place to do each type of business that exists. The law must recognize a business entity or a business entity, both a legal entity, a not-legal business entity, an individual business entity, and a partnership business entity.

A business entity in the form of an individual company or a trade business must not be established with a valid deed from a notary or some notary. However, in reality that happens in everyday life, usually, an individual company or a trade business is established with a valid deed from a notary or several notaries. This is because there is no law that regulates a Limited Liability Company or a Trading

Business. Examples of an Individual Company or a Trading Business, namely: Trading Company and Autobody Company.

Whereas for a business entity in the form of a Firm Fellowship and a Commander Association is regulated in Article 16 to Article 35 of the Commercial Law. For a business entity in the form of a Limited Liability Company regulated in Law Number 1 of 1995 concerning Limited Liability Company, a business entity in the form of a Company and a Public Company are regulated in Law Number 9 of 1969 concerning State Enterprises. An individual company or a trade business, a firm partnership, and a communal partnership are not-legal forms of business entity. While a Limited Liability Company is a form of legal entity business entity. A Limited Liability Company is part of a Private Owned Enterprise. Whereas a Company Company and a Public Company are part of a State-Owned Enterprise.

B. Forms of A Business Entity

A business entity has two types of forms, namely a legal entity and a legal entity. A business activity that is in a business entity can be carried out by someone or several people as a partnership. A partnership is an institution or an organization consisting of several people. There are several elements of a partnership, namely as follows:¹²

1. There is a common will.
2. There is a directed and coordinated collaboration.
3. There is a common interest.
4. There is a common goal.

The above elements must exist in an institution or an organization, both legal entities and non-legal entities. A legal entity and a non-legal business entity have various differences. One of them is the process of establishing a business entity. In the process of establishing a legal business entity, it requires the ratification of a legal establishment deed by the government (Minister of Law and Human Rights).¹³ Whereas in the process of establishing a non - legal business entity there is no need for ratification of a legal establishment deed from the

government (Minister of Law and Human Rights). For example, to establish a Communal Command does not require the existence of a valid deed from a notary or some notaries, it does not need to be registered in the Registrar's Office of the District Court, and does not need to be ratified by the Minister of Law and Human Rights.¹⁴

C. Definition of A Command Fellowship

A Commander Association or a *Commanditaire Vennootschap* (can be referred to as CV) is a form of company established by one person or several people who work together and are responsible in whole by the way one person or one party is tasked to lend money to other people or other parties as stipulated in the Commercial Law.¹⁵ The basic legal rules governing a Firm Fellowship also have similarities with the basic legal rules governing a Commander Alliance. This is clearly and specifically regulated in Article 19 to Article 35 of the Basic Law. However, there are differences in arrangements regarding a Firm Fellowship with arrangements regarding a Commander Alliance, namely the arrangement of complementary allies (active allied parties) who are tasked with lending money to other people or other parties regulated in in Articles 19, 20, and 21 of the Commercial Law Code. A Commander Association is also a Firm Fellowship that has one party or several parties from the allied commanders (passive allies). Because in a Firm Fellowship there are only parties of the firmament allies (active allied parties) only, while in a Commander Alliance there are complementary allies (active allied parties) and allied command parties (passive allies parties).¹⁶

The rules in Article 19 of the Commercial Law stipulate that a Commander Association is an alliance consisting of one person or several people who act as complementary allies (active allied parties) who have roles and the duty to be personally responsible for all capital or all money that has been lent to other people or other parties.¹⁷ The complementary allies (active allied parties) have the duty to include capital that can be in the form of objects, energy, and also money to a Commander Association. In addition, complementary allies (active allied parties) are also responsible for the efforts that they have made for a Communist

Commanders and have the right to obtain the greatest possible profit from a business activity that they have carried out. Therefore, the complementary allies (active allied parties) are also responsible for the benefits and losses that exist within a Commander Alliance in accordance with the efforts they have made.

Based on the explanation above, the allies of the management board or the working parties or complementary allies are allied parties who are active in carrying out a business activity that is in a Commander Alliance.¹⁸ So that the complementary allies (active allied parties) have a role and duty to regulate all business activities that exist within a Commander Alliance such as the parties of allies of the firmament (active allied parties) who are in a Firm Fellowship Whereas the allied parties are silent or the allied parties do not work or the allied command parties (passive allied parties) do not have the role and duty to regulate all business activities that exist within the Commander Association. Commandant allies (passive allied parties) only have a role and duty to lend capital or money to other people or other parties. So what distinguishes between a Communist Guild and another alliance is the existence of allied command parties (passive allied parties).

D. Establishment of A Command Fellowship

To establish a new Commander Association there is no need for a form and a certain formality requirement. This is because to establish a new Commander Association can be done in a written way or by verbal means, which can be in the form of a deed signed by the parties of complementary allies (active allied parties) and allied command parties (passive allied parties) concerned and third parties and an authentic deed. In addition, to establish a new Commander Association there is no need to register or announce in an Indonesian State News. Therefore, a Commander Association has the same characteristics as a Firm Fellowship, that is, both must comply with all legal regulations governing the two alliances.

To establish a new Commander Association in the country of Indonesia usually uses an authentic Notary deed. Although to establish a new Commander

Association there is actually no need for a form and a certain formality requirement, all that is needed is not to make a loss for a third party.¹⁹ However, if in establishing a Commander Association using an authentic Notary deed, then the Notary deed must be registered at the District Court Registrar's Office where the Commander Association is located.²⁰ But the part of the Notary deed that must be registered at the District Court Registrar's Office where the Commander Association is located is only part of the Articles of Association, this is regulated in Article 24 of the Commercial Law Act which is in the Budget The basis must contain things, as follows:²¹

- a. The name, place of residence, and the work of complementary allies (active allied parties) and the relevant allied parties (passive allied parties) concerned.
- b. A statement that a Commander Fellowship only conducts a business activity which is only part of a certain field.
- c. The names of the complementary allies (active allied parties) and the relevant allied parties (passive allied parties) concerned.
- d. The time of the start and time of the expiration of a business activity that exists within a Commander Association.
- e. Other important things about third parties that are inside the Commander Association.

The thing that must be determined in establishing a Commander Association is the amount of capital that is in the Commander Association. Based on the regulations contained in Article 1619 of the Civil Code, it stipulates that the roles and duties of complementary allies (active allied parties) not only include capital in the form of goods and money but also include capital in the form of crafts and energy. So that the basic capital that is in a Commander Association is not only in the form of goods and money but also crafts and energy can also be used as the basic capital to establish a new Commander Association. Although only the complementary allies (active allied parties) can enter the capital in the form of goods, crafts, labor, and money. While the allied command parties

(passive allied parties) can only enter the capital in the form of money and goods only.²²

The stages for establishing a new Commissioner Association are as follows:²³

1. Make an overview of the official contents of a Commissioner Association's establishment deed which is displayed as follows:
 - a. Full name, occupation, and residential address of the founders of a Commander Association.
 - b. The name that will be used by the Commander Association.
 - c. A general description of what is meant specifically from the Commander Association to carry out a business activity.
 - d. The names of complementary allies (active allied parties) and allied political parties (passive allies) in power for the cooperation agreement.
 - e. The time of the start of a business activity that exists within a Commander Association.
 - f. Date of registration from the deed of implementation to the District Court.
 - g. Cash from a Commander Association. specifically provided to collectors from third parties.
 - h. The amount used for the initial capital of a business activity that is in the Commander Association.
2. Registering the deed of establishment into the Registrar of the District Court that invites and attaches the legal deed of approval from the Commander Association.
3. Announce the founding deed in the Supplementary State Gazette of the Republic of Indonesia.

Documents needed to take care of licensing of a Command Partnership, namely as follows:²⁴

1. Notary deed.
2. Certificate of domicile of a Commander Association.
3. Taxpayer Identification Number (TIN).

4. Ratification or legalization of the court in accordance with the domicile of a Command Alliance.
5. Trading Business License (TBL).
6. Company Registration Number.

These documents can be registered in the Registrar's Office of the District Court that is authorized and authorized by the Minister of Law and Human Rights.

A Commander Association has several advantages, namely as follows:²⁵

1. It is easy to get capital, because the banks trust it more.
2. Ability in matters concerning management of his business is greater.
3. It is easy to get an injection of capital, because a Commander Association is already well-known in Indonesia.
4. Existing risks can be solved together.
5. It is easy to develop a business activity that it runs.

A Commander Association also has several disadvantages, namely as follows:

1. Erratic company activities.
2. It is easy for conflicts to occur between complementary allies (active allied parties) and allied command parties (passive allies).
3. The invested capital, it is difficult to be taken back.
4. Complementary allies (active allied parties) who have unlimited responsibility for their personal assets.

E. Responsibilities of Allied Parties A Commanders Alliance

A Commander Association is a form of non-legal business entity consisting of complementary allies (active allied parties) and also allied command parties (passive allied parties). Complementary allies (active allied parties) and command allies (passive allied parties) carry out a business activity that is within the Commander Association. Business activity has the aim to obtain profits as much as possible.

A Commander Association is led by a complementary ally (an active allied party) or by a number of complementary allies (some passive allied parties).

Whereas for a Firm Fellowship can be led by some complementary allies (some active allied parties).

A Commander Association has a problem regarding the separation of shared assets owned by a Communist Alliance with personal assets owned by the complementary allies (active allied parties). The matter regarding the separation between assets and personal assets can be settled legally with the help of a third party. A Communal Alliance can also be tacit and openly.

Within a Commander Association consists of complementary allies (active allied parties) and allied command parties (passive allied parties). There are also experts in legal experts who refer to the terms of the allies of the work (the allies of the management) and the allied parties do not work (the allies are not administrators). Both parties (parties of complementary allies and allied parties of commanders) have different responsibilities. Complementary allies (active allied parties) have the responsibility to carry out a business activity inside and outside of a Commander Association. Whereas for the allied parties (passive allied parties) have the responsibility to lend capital from the other parties used to carry out a business activity inside and outside a Commander Alliance.²⁶

In Article 19 the Law on Commercial Law is governed by the responsibilities of complementary allies (active allied parties) and allied political parties (passive allied parties). This responsibility must be carried out in full in accordance with the agreement that has been made. In Article 21 of the Code of Commerce Law also regulates complementary allies (active allied parties) who have responsibility for a business activity that is inside and outside a Commander Alliance with a third party, while for the allied command parties (passive allied parties) only have responsibility for a business activity that is within the Commander Association.

F. Legal Status of A Command Fellowship

A Commander Association or another company in the form of a partnership is a business entity that is not legal in nature. So that the relationship of a Communist Alliance with a third party cannot be equated with the

relationship of a Communist Alliance with the allied command parties (passive allies) and also complementary allies (active allied parties). Because the third party that conducts a business activity that is in a Communist Alliance can only be represented by complementary allies (active allied parties) only.²⁷ So according to the regulations contained in Article 23 of the Law on Commercial Law regulates that a Commissioner Alliance is not a legal entity because there is no endorsement from an authorized organization or institution at the time of the establishment of the Communist Alliance this is done. In addition, allied parties (passive allies) and complementary allies (active allies) have unlimited responsibilities, until the responsibility includes their personal assets. Therefore, a Commissioner Association cannot be called a legal entity.²⁸

G. Dissolution of A Command Fellowship

Regarding the dissolution of a Commander Association is regulated in Article 31 to Article 35 of the Commercial Law. The process of dissolving a Firm Fellowship has similarities with the dissolution process of a Command Partnership. This is because both things are arranged in the Commercial Law clearly and specifically. The process of dissolving a Communist Guild can be carried out by one person or several people, which is based on the strength of the agreement of the process of establishing the Commander Association that has been carried out. This can be done if you have obtained permission to dissolve the parties of the allied commanders (passive allied parties) and complementary allies (active allied parties) who are referred to as heirs. However, if the dissolution process of a Commander Association is rejected by the heirs, then the heirs can prove the existence of a process of establishment of a Commander Association by registering and announcing an authentic deed owned by a The Commander Association is in the Supplementary State Gazette of the Republic of Indonesia.

The process of dissolution of a Commissioner Alliance can be done by various kinds of processes, namely: the process of disengagement, the process of termination, or the approval process, this has been regulated in Article 31 of the Commercial Law which regulates that a dissolution process must be proven by the

existence of an authentic deed and the registration and announcement in the Supplement to the State Gazette of the Republic of Indonesia. However, if there is something in the process of dissolution that is forgotten by the allied parties (passive allied parties) and complementary allies (active allied parties), then a process of dissolution of the Commander Association is considered never happened and a Commander Association is deemed to exist and is considered still having a relationship with one of a third party.

In a process of dissolution of Commander Association, the allied parties of the allies (passive allied parties) and complementary allies (active allied parties) who initially had a role and duty to regulate the course of a business activity in a Commander Fellowship, now also must complete the course of a business activity that exists in a Commander Alliance. In addition, complementary allies (active allied parties) also have the authority to appoint an executive or several other administrators with the most votes to complete the course of a business activity that exists in a Commander Association.²⁹ If in the voting the new management cannot be found, then it will be resolved by the decision process from the District Court where the Commander Association is located.

III. CONCLUSION

Based on the explanation described in the introduction and in the discussion section, it can be concluded that:

- a. The complementary allies (active allied parties) are responsible for a Commander Alliance up to their personal assets, while for allied command parties (passive allied parties) are responsible for a Communist Alliance not up to their personal assets.
- b. If a Commander Association has a complementary ally (active allied parties) that has a large number, then the responsibility for a Commander Association is jointly shared responsibility up to their personal assets.
- c. If a Commander Association is in a state of bankruptcy, then all personal assets of commander allies (active allied parties) who will be seized or will

be used to payoff debts-loans or loans from a Commander Alliance that cannot be paid yet.

Based on the explanation above, the allies of the management board or the working parties or complementary allies are active allies who have the role and duty to regulate all business activities that exist within the Commander Association. While the allies are silent or the allied parties do not work or the allied command parties are passive allies who do not have the role and duty to regulate all business activities that exist within the Commander Association. Commandant allies (passive allied parties) only have the role and duty to lend capital or money to other people or other parties

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